

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

ADMIRAL METALS SERVICENTER CO.,
INC.,
Plaintiff,

v.

FEUZ MANUFACTURING, INC. and
GARY A. FEUZ, individually,
Defendants,

v.

GENERAL ELECTRIC COMPANY and
EMPIRE RECYCLING OPERATIONS,
INC.,

Reach and Apply Defendants.

CIVIL ACTION
NO.: 04 12204 JLT

**DEFENDANTS' MOTION FOR LEAVE TO FILE
AN AMENDED COMPLAINT (COUNTERCLAIM)**

The defendants, Gary Feuz and Feuz Manufacturing, Inc., request this Honorable Court grant it leave to file an *Amended Complaint (Counterclaim)*. As grounds therefore, the defendants state as follows:

On or about October 26, 2004 the defendants filed a *Counterclaim* alleging counts of breach of contract and violations of M.G.L. ch. 93A. The defendants now seek to amend their *Counterclaim* by adding the following counts: (1) breach of express warranty; (2) breach of the implied warranty of merchantability; and (3) breach of the implied warranty of fitness for a particular purpose. The plaintiff will not be prejudiced by the addition of these counts since discovery has not yet begun and neither trial nor any other dispositive motion hearing has been scheduled. Amendment under these circumstances is clearly warranted by Fed. R. Civ. P. Rule 15 ("leave shall be freely

given when justice so requires.”). The defendants’ amended counterclaim is attached as Exhibit “A.”

WHEREFORE, for all of the above-stated reasons, the defendants’ *Motion* should be allowed.

REQUEST FOR A HEARING

The defendants respectfully request a hearing on the *Motion* as oral argument may assist the Court in determining the issues presented herein.

Respectfully submitted,
FEUZ MANUFACTURING, INC. and
GARY A. FEUZ,
by their attorneys,

/s/ Michael B. Flynn

Michael B. Flynn BBO #559023
Richard A. Davidson, Jr. BBO #552988
FLYNN & ASSOCIATES, P.C.
400 Crown Colony Drive, Suite 200
Quincy, MA 02169
(617) 773-5500

DATE: November 8, 2004

G:\F & A\CASE FILES\Feuz Manufacturing\pleadings\mfleavetoamend.doc